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**Notice of Allowability**

Application No.

10/681,175

Applicant(s)

DE RIS ET AL.

Examiner

Art Unit

Stanley J. Pruchnic, Jr.

2859

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10 May 2005.
2. ☒ The allowed claim(s) is/are 1-10.
3. ☒ The drawings filed on 10 May 2005 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|   | 9. <input type="checkbox"/> Other _____.   |

***Election/Restrictions***

1. Applicant has already canceled **Claim 11** in the response filed 10 May 2005.
2. **Claims 11-12** were previously withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected election, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 27 August 2004.
3. Newly submitted **claims 13-15** are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 13-15 are drawn to the non-elected invention of Group II, a method for measuring the response of a material or device to fire. The method claims are distinct from the apparatus of Claims 1 and 10 for the reasons stated in the Office Action mailed 28 July 2004.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits.

Accordingly, **claims 12-15** are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

**EXAMINER'S AMENDMENT**

4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Examiner made phone calls to attorney John P. Shannon in order to inform him of the status of the claims, but was unable to reach him on 07-09 June 2005.

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5. The application has been amended as follows in order to cancel the non-elected claims.

**In the Claims:**

6. This application is in condition for allowance except for the presence of claims 12-15, drawn to Group II, non-elected without traverse (in the Reply filed 27 August 2004).

Accordingly, **Claims 12-15 have been cancelled.**

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Reasons for Allowance***

8. The following is an examiner's statement of reasons for allowance:

Applicant's arguments (see REMARKS, filed 10 May 2005) with respect to Claims 1, 2 and 10 have been fully considered and are persuasive in view of the amendment. Applicant's argument regarding the coating being the same is not fully persuasive on its own, since SMITH discloses a test specimen having a coating that matches the emissivity of a process product. Moreover SMITH discloses or suggests having an area that is the same as the process product.

**Claims 1 and 10** are allowable because the prior art fails to teach or fairly suggest a measuring device for determining the radiant heat flux absorbed by a test

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specimen in a fire test apparatus, the specimen having an area exposed to radiant heating and being held in a specimen holder and coated with a coating to simulate the heat absorption of a material or object during a fire, wherein the measuring device comprises an electrical heating element (or an electrical heating means *as claimed by Applicant in Claim 10*) in heat transfer relationship with said body, free from interposition, between the heating element (means *for heating*) and said body, of the coating on said body, in combination with the other limitations of the respective claims.

The preamble of each of Claims 1 and 10 breathes life and meaning into the claims because the measuring device includes the same holder for the body as the holder in which the specimen is held in the fire test apparatus and the measuring device body includes the same coating as the coating on the test specimen in the fire test apparatus.

**Claims 2-9** are allowable by virtue of their dependency upon Claim 1.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the form PTO-892 and not mentioned above disclose related heating simulation devices and methods. COTE et al. (U.S. Patent No. 6,568,846 B1 discloses a method of simulating heating damage on coated metal, quantifying the amount of energy absorbed calorimetrically.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stanley J. Pruchnic, Jr., whose telephone number is **(571) 272-2248**. The examiner can normally be reached on weekdays (Monday through Friday), the best hours being from 8:30 AM to 4:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez (Art Unit 2859) can be reached at **(571) 272-2245**. The *Official FAX* number for Technology Center 2800 is (703) 872-9306 for all official communications.

Any inquiry of a general nature or relating to the status of this application or proceeding may be directed to the official USPTO website at [www.uspto.gov](http://www.uspto.gov) or you may call the **USPTO Call Center** at **800-786-9199** or 703-308-4357. The Technology Center 2800 Customer Service FAX phone number is (703) 872-9317.

The cited U.S. patents and patent application publications are available for download via the Office's PAIR. As an alternate source, all U.S. patents and patent application publications are available on the USPTO web site, from the Office of Public Records and from commercial sources.

Private PAIR provides external customers Internet-based access to patent application status and history information as well as the ability to view the scanned images of each customer's own application file folder(s).

For inquiries relating to Patent e-business products and service applications, you may call the **Patent Electronic Business Center (EBC)** at **703-305-3028** or toll free at **866-217-9197** between the hours of **6 a.m. and midnight Monday through Friday EST**, or by e-mail at: [ebc@uspto.gov](mailto:ebc@uspto.gov). Additional information is available on the Patent EBC Web site at: <http://www.uspto.gov/ebc/index.html>.

*SJP*

Stanley J. Pruchnic, Jr.  
11 June 2005

*G. Verbitsky*  
**GAIL VERBITSKY  
PRIMARY EXAMINER**



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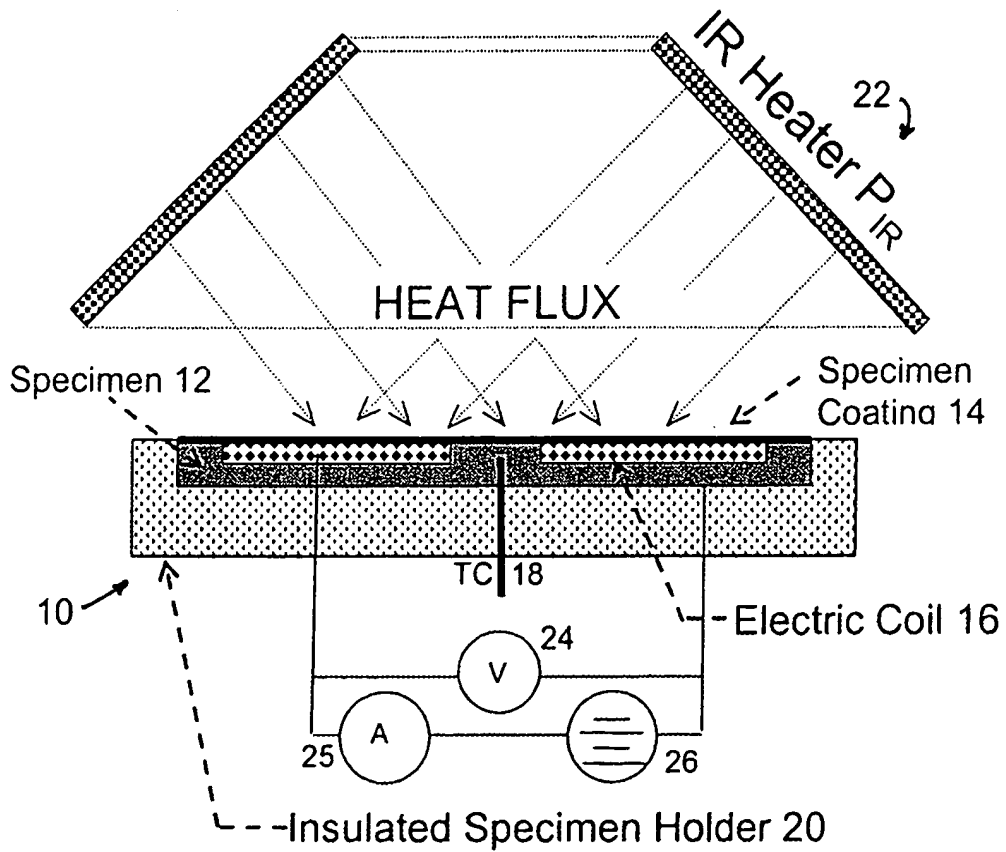


Figure 1

Design change approved - see 6/6/05